Supreme Court, U.S.
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No. 95-948

In The

Supreme Court of the United States

October Term, 1995

TERM AUTO SALES, INC., et al.,

Petitioners,

vs.

THE CITY OF CLEVELAND, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly held that the warrantless search of a business engaged in selling used cars and salvaging wrecked or otherwise inoperable cars, conducted pursuant to a city ordinance authorizing such inspections, was a permissible administrative inspection of a closely regulated business under *New York v. Burger,* 482 U.S. 691 (1987)?

LIST OF PARTIES

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, respondents hereby incorporate by reference the list of parties set forth on page ii of the Petition for a Writ of Certiorari as an accurate statement of the parties and any applicable corporate relations.

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STATEMENT OF JURISDICTION

Petitioners challenged the constitutionality of § 601.15 of the codified ordinances of the City of Cleveland which authorized inspections at certain enumerated business premises for the purpose of locating stolen motor vehicles and motor vehicle parts.

On May 18, 1995, the United States Court of Appeals for the Sixth Circuit upheld § 601.15 against the petitioners' facial challenge.

On July 12, 1995, the Court of Appeals denied the petition for rehearing.

Petitioners invoke this Court's jurisdiction and seek a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners sold used cars and salvaged parts from wrecked and otherwise inoperable cars from the same business address.

On July 21, 1986, members of the auto theft unit of the Cleveland police department made an unannounced administrative inspection of the petitioners' business premises to determine whether there were any stolen motor vehicles or motor vehicle parts on the premises. The inspection was conducted pursuant to § 601.15 of the codified ordinances of the City of Cleveland. Several vehicles and vehicle parts were seized as suspected stolen vehicles. A grand jury in Cuyahoga County, Ohio, returned a twenty-one (21) count indictment against the

petitioners, but the charges were later dismissed on motion of the prosecutor for Cuyahoga County.

Subsequently, on July 17, 1987, petitioners brought this action in the United States District Court for the Northern District of Ohio, pursuant to 28 U.S.C. §§ 1331 and 1343(3) and 42 U.S.C. § 1983, against the City of Cleveland, former chief of police Howard Rudolph, and several individual Cleveland police officers. Petitioners challenged the constitutionality of Cleveland codified ordinance § 601.15 which authorized the inspection of motor vehicles and motor vehicle parts at petitioners' business premises. Petitioners claimed that the search and seizure by the Cleveland police violated their rights under the Fourth Amendment to the United States Constitution.

On July 28, 1992, the district court denied summary judgment to the individual Cleveland police officers who claimed qualified immunity.

On June 28, 1993, the United States Court of Appeals for the Sixth Circuit reversed the district court's ruling and held that the individual police officers were entitled to qualified immunity. The court remanded the matter for further proceedings as to the remaining defendants, respondents City of Cleveland and Howard Rudolph.

Following remand, the district court granted summary judgment to the respondents on August 10, 1993. Petitioners requested relief from that judgment pursuant to Fed. R. Civ. P. 60(b), but the district court denied petitioners' motion on December 14, 1993.

Petitioners appealed to the Sixth Circuit Court of Appeals. On May 18, 1995, the court of appeals affirmed the district court's judgment and held that Cleveland codified ordinance § 601.15 was not unconstitutional in violation of the Fourth Amendment.

The court of appeals denied the petitioners' request for rehearing on July 12, 1995.

ARGUMENT

The petition for a writ of certiorari should be denied because the court of appeals correctly analyzed Cleveland codified ordinance § 601.15 in accordance with the standards established in *New York v. Burger,* 482 U.S. 691 (1987). Nothing in the petition suggests that the court of appeals' decision in this case conflicts with a decision of this Court or with the decision of another court of appeals or state court of last resort. Similarly, nothing in the petition indicates that the court of appeals departed in any way from the accepted and usual course of judicial proceedings. Because the court of appeals properly applied the standards set forth in *New York v. Burger* to Cleveland's vehicle inspection ordinance, there is no reason for this Court to revisit the issue presented by this case. Accordingly, the petition should be denied.

In *New York v. Burger,* the Court held that a warrantless search of an automobile junk yard pursuant to a statute authorizing such a search fell within the exception to the warrant requirement for administrative inspections of closely regulated businesses and therefore did not

violate the Fourth Amendment.[1] Because owners and operators of such closely regulated businesses have a reduced expectation of privacy, a warrantless inspection of such commercial premises will be deemed reasonable so long as three criteria are met:

> First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made. . . . Second, the warrantless inspections must be "necessary to further [the] regulatory scheme." . . . Finally, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant."

New York v. Burger, 482 U.S. at 702-703 (quoting *Donovan v. Dewey*, 452 U.S. 594 (1981)).

With regard to the last requirement, the regulatory statute must perform the two basic functions of a warrant. First, it must be sufficiently comprehensive and defined so that the owner of commercial property cannot help but be aware that the property will be subject to periodic inspections undertaken for specific purposes and that the search is being made pursuant to the law.

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[1] The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York v. Burger, 482 U.S. at 703. Additionally, the discretion of the inspecting officers must be carefully limited in time, place and scope. *Id.*

The *Burger* court found that there was a substantial government interest in close regulation of the vehicle-dismantling and automobile-junkyard industry because of the extent of motor vehicle theft that is associated with this industry. *Id.*, 482 U.S. at 708-709. The Court further determined that warrantless administrative inspections of such premises were necessary to serve the substantial interest in eradicating automobile theft. *Id.* at 709-710.

Finally, the *Burger* court ruled that the regulatory statute provided a constitutionally adequate substitute for a warrant. *Id.*, 482 U.S. at 711-712. The statute sufficiently informed the operator of a vehicle dismantling business that regular inspections would occur pursuant to the statute. The statute identified who was authorized to conduct the inspection and limited the scope of the inspection so the business operator had notice as to how to comply with the statute. And the inspection was limited as to time, place and scope in that the inspections of vehicle-dismantling and related industries could occur only during regular and usual business hours and the items to be inspected were narrowly defined to include records, vehicles, or vehicle parts that were on the premises and that were subject to the law's requirements.

Accordingly, a warrantless search conducted pursuant to such a regulatory statute fell within the exception to the warrant requirement for administrative inspections of "closely regulated" businesses and did not violate the Fourth Amendment.

In the instant case, the petitioners have not disputed that Cleveland codified ordinance § 601.15 was predicated on the substantial government interest of detecting motor vehicle theft. The petitioners conceded below that they were engaged in a closely regulated business. The petitioners likewise have not challenged that warrantless inspections are necessary to further this regulatory scheme.

The petitioners' only apparent disagreement here is with the court of appeals' conclusion that § 601.15 provided a constitutionally adequate substitute for a warrant in a manner consistent with that upheld in *New York v. Burger*. But a review of § 601.15, the full text of which is set forth at App. 17-18, vindicates the court of appeals' determination that Cleveland's vehicle inspection ordinance meets the standard announced in *New York v. Burger*.

Cleveland's ordinance expressly states that the purpose of the inspections is "to establish the rightful ownership or possession of the vehicle or vehicle part" that is subject to such inspections. § 601.15(a).

The ordinance specifies that the only persons authorized to make such inspections are the chief of police or an authorized representative of the chief of police. § 601.15(a),(b).

The ordinance further specifies that the items subject to inspection are: (1) any motor vehicle, as defined in Section 4501.01 of the Ohio Revised Code; (2) any motor vehicle part that has been marked with an identifying number by the manufacturer; and (3) the title, registration, vehicle identification number, or license plates of such vehicle. § 601.15(a). Inspections may also be made of

any implements of husbandry and construction equipment. § 601.15(b).

The items subject to inspection are limited to those items that are "situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment." § 601.15(a).

The ordinance further provides that whenever possible, such inspections "shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations." § 601.15(c).

In short, Cleveland's inspection ordinance identifies the who, what, when, where and why for limited motor vehicle inspections. Any discretion is sufficiently curtailed by the ordinance's limitations as to time, place and scope.

Under these circumstances, there is no basis to conclude that a business like these petitioners could be unaware that motor vehicles and motor vehicle parts on their business premises would be subject to inspection pursuant to § 601.15. Because it was conceded in the lower court that petitioners were engaged in a "closely regulated business," the court of appeals properly determined that petitioners lacked legal standing to complain that the ordinance could conceivably be enforced against other than closely regulated businesses.

Petitioners make no claim that this ordinance was applied to them in an unconstitutional manner. Under

these circumstances, the court of appeals correctly concluded that Cleveland's ordinance regulating this closely regulated business was sufficiently comprehensive and defined to be a constitutionally adequate substitute for a warrant.

While the petitioners insist that Cleveland's ordinance is constitutionally flawed because it does not specify the frequency or regularity of such inspections, the deterrent value of the inspections would be largely negated absent some element of surprise. In *New York v. Burger,* this Court observed:

> Because stolen cars and parts often pass quickly through an automobile junk yard, "frequent" and "unannounced" inspections are necessary in order to detect them. In sum, surprise is crucial if the regulatory scheme aimed at remedying this major social problem is to function at all.

Id., 482 U.S. at 710. See also *United States v. Biswell,* 406 U.S. 311, 316 (1972) ("[I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential.").

As the court of appeals found, Cleveland's ordinance in this case was "close enough in . . . scope, intent, and purpose" to the statute upheld in *New York v. Burger* to withstand the petitioners' facial challenge.

Moreover, the petitioners provide no grounds for this Court to grant certiorari in this case. The court of appeals applied the law of *New York v. Burger* and petitioners have made no showing that the lower court's constitutional analysis was demonstrably flawed or is in conflict with

any other decision. Even if this case were marginally distinguishable from *New York v. Burger* due to slightly different statutory provisions, any distinction would not be of such constitutional magnitude that demands further review by this Court, much less that should lead to a different result. *New York v. Burger* remains determinative under these circumstances and nothing about the instant case provides any reason to re-examine the issue again.

Accordingly, the petition for a writ of certiorari should be denied.

CONCLUSION

For the reasons stated, Respondents City of Cleveland and Howard Rudolph respectfully request that the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

28 United States Code Section 1254:

§ 1254. Courts of appeals; certiorari, certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 United States Code Section 1331:

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 United States Code Section 1343:

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section –

(1) The District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to

be a statute of the District of Columbia.

42 United States Code Section 1983:

§ 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX C

Ohio Revised Code

§ 4501.01 Definitions

As used in this chapter and Chapters 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided:

(A) "Vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

(B) "Motor vehicle" means any vehicle, including manufactured homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour or less, threshing machinery, hay-baling machinery, corn sheller, hammermill and agricultural tractors,

machinery used in the production of horticultural, agricultural, and vegetable products, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(C) "Agricultural tractor" and "traction engine" mean any self-propelling vehicle that is designed or used for drawing other vehicles or wheeled machinery, but has no provisions for carrying loads independently of such other vehicles, and that is used principally for agricultural purposes.

(D) "Commercial tractor," except as defined in division (C) of this section, means any motor vehicle that has motive power and either is designed or used for drawing other motor vehicles, or is designed or used for drawing another motor vehicle while carrying a portion of the other motor vehicle or its load, or both.

(E) "Passenger car" means any motor vehicle that is designed and used for carrying not more than nine persons and includes any motor vehicle that is designed and used for carrying not more than fifteen persons in a ridesharing arrangement.

(F) "Collector's vehicle" means any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector's item, leisure pursuit, or investment, but not as the owner's principal

means of transportation. "Licensed collector's vehicle" means a collector's vehicle, other than an agricultural tractor or traction engine, that displays current, valid license tags issued under section 4503.45 of the Revised Code, or a similar type of motor vehicle that displays current, valid license tags issued under substantially equivalent provisions in the laws of other states.

(G) "Historical motor vehicle" means any motor vehicle that is over twenty-five years old and is owned solely as a collector's item and for participation in club activities, exhibitions, tours, parades, and similar uses, but that in no event is used for general transportation.

(H) "Noncommercial motor vehicle" means any motor vehicle, including a farm truck as defined in section 4503.04 of the Revised Code, that is designed by the manufacturer to carry a load of no more than one ton and is used exclusively for purposes other than engaging in business for profit.

(I) "Motor bus" means any motor vehicle that has motor power and is designed and used for carrying more than nine passengers, except any motor vehicle that is designed and used for carrying not more than fifteen passengers in a ridesharing arrangement.

(J) "Commercial car" means any motor vehicle that has motor power and is designed and used for carrying merchandise or freight, or that is used as a commercial tractor.

(K) "Bicycle" means every device, other than a tricycle that is designed solely for use as a play vehicle by a child, that is propelled solely by human power upon

which any person may ride, and that has either two tandem wheels, or one wheel in front and two wheels in the rear, any of which is more than fourteen inches in diameter.

(L) "Motorized bicycle" means any vehicle that has either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled, and that its equipped with a helper motor of not more than fifty cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface.

(M) "Trailer" means any vehicle without motive power that is designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle, and includes any such vehicle that is formed by or operated as a combination of a semitrailer and a vehicle of the dolly type such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed greater than twenty-five miles per hour, and a vehicle that is designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour. "Trailer" does not include a manufactured home or travel trailer.

(N) "Noncommercial trailer" means any trailer, except a travel trailer or trailer that is used to transport a

boat as described in division (B) of this section, but, where applicable, includes a vehicle that is used to transport a boat as described in division (M) of this section, that has a gross weight of no more than three thousand pounds, and that is used exclusively for purposes other than engaging in business for a profit.

(O) "Manufactured home" means any nonself-propelled vehicle transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure are based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

(P) "Semitrailer" means any vehicle of the trailer type that does not have motive power and is so designed or used with another and separate motor vehicle that in operation a part of its own weight or that of its load, or both, rests upon and is carried by the other vehicle furnishing the motive power for propelling itself and the vehicle referred to in this division, and includes, for the purpose only of registration and taxation under those chapters, any vehicle of the dolly type, such as a trailer

dolly, that is designed or used for the conversion of a semitrailer into a trailer.

(Q) "Recreational vehicle" means a vehicular portable structure that is designed and constructed to be used as a temporary dwelling for travel, recreational, and vacation uses and is classed as follows:

(1) "Travel trailer" means a nonself-propelled recreational vehicle that does not exceed an overall length of thirty-five feet, exclusive of bumper and tongue or coupling, and includes a tent-type fold-out camping trailer as defined in section 4517.01 of the Revised Code.

(2) "Motor home" means a self-propelled recreational vehicle that is constructed with permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping.

(3) "Truck camper" means a nonself-propelled recreational vehicle that does not have wheels for road use and is designed to be placed upon and attached to a motor vehicle. "Truck camper" does not include truck covers that consist of walls and a roof, but do not have floors and facilities enabling them to be used as a dwelling.

(4) "Fifth wheel trailer" means a vehicle that is of such size and weight as to be movable without a special highway permit, that has a gross trailer area of four hundred square feet or less, that is constructed with a raised forward section that allows a bi-level floor plan, and that is designed to be towed by a vehicle equipped with a fifth-wheel hitch ordinarily installed in the bed of a truck.

(5) "Park trailer" means a vehicle that is commonly known as a park model recreational vehicle, meets the American national standard institute standard A119.5 (1988) for park trailers, is built on a single chassis, has a gross trailer area of four hundred square feet or less when set up, is designed for seasonal or temporary living quarters, and may be connected to utilities necessary for the operation of installed features and appliances.

(R) "Pneumatic tires" means tires of rubber and fabric or tires of similar material, that are inflated with air.

(S) "Solid tires" means tires of rubber or similar elastic material that are not dependent upon confined air for support of the load.

(T) "Solid tire vehicle" means any vehicle that is equipped with two or more solid tires.

(U) "Farm machinery" means all machines and tools that are used in the production, harvesting, and care of farm products, and includes trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour or less.

(V) "Owner" includes any person, firm, or corporation other than a manufacturer or dealer that has title to a motor vehicle, except that in sections 4505.01 to 4505.19 of the Revised Code, "owner" includes in addition manufacturers and dealers.

(W) "Manufacturer" and "dealer" include all persons, firms, and corporations that are regularly engaged

in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles, at an established place of business that is used exclusively for the purpose of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. A place of business that is used for manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles shall be deemed to be used exclusively for those purposes even though snowmobiles or all-purpose vehicles are sold or displayed for sale thereat, even though farm machinery is sold or displayed for sale thereat, or even though repair, accessory, gasoline and oil, storage, parts, service, or paint departments are maintained thereat, or, in any county having a population of less than seventy-five thousand persons at the last federal census, even though a department in a place of business is used to dismantle salvage, or rebuild motor vehicles by means of used parts, if such departments are operated for the purpose of furthering and assisting in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. Places of business or departments in a place of business used to dismantle, salvage, or rebuild motor vehicles by means of using used parts are not considered as being maintained for the purpose of assisting or furthering the manufacturing, selling, displaying, and offering for sale or dealing in motor vehicles.

(X) "Operator" includes any person who drives or operates a motor vehicle upon the public highways.

(Y) "Chauffeur" means any operator who operates a motor vehicle, other than a taxicab, as an employee for hire; or any operator whether or not the owner of a motor vehicle, other than a taxicab, who operates such vehicle

for transporting, for gain, compensation, or profit, either persons or property owned by another. Any operator of a motor vehicle who is voluntarily involved in a ridesharing arrangement is not considered an employee for hire or operating such vehicle for gain, compensation, or profit.

(Z) "State" includes the territories and federal districts of the United States and the provinces of Canada.

(AA) "Public roads and highways" for vehicles includes all public thoroughfares, bridges, and culverts.

(BB) "Manufacturer's number" means the manufacturer's original serial number that is affixed to or imprinted upon the chassis or other part of the motor vehicle.

(CC) "Motor number" means the manufacturer's original number that is affixed to or imprinted upon the engine or motor of the vehicle.

(DD) "Bill of sale" means the written statement or document of transfer or conveyance required prior to January 1, 1938, to be executed and delivered by the corporation, partnership, association, or person selling, giving away, transferring, or passing title to a motor vehicle.

(EE) "Distributor" means any person who is authorized by a motor vehicle manufacturer to distribute new motor vehicles to licensed motor vehicle dealers at an established place of business that is used exclusively for the purpose of distributing new motor vehicles to

licensed motor vehicle dealers, except when the distributor also is a new motor vehicle dealer, in which case he may distribute at the location of his licensed dealership.

(FF) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver and includes ridesharing arrangements known as carpools, vanpools, and buspools.

(GG) "Apportionable vehicle" means any vehicle that is used or intended for use in two or more international registration plan member jurisdictions that allocate or proportionally register vehicles, that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and that meets any of the following qualifications:

(1) Is a power unit having a gross vehicle weight in excess of twenty-six thousand pounds;

(2) Is a power unit having three or more axles, regardless of the gross vehicle weight;

(3) Is a combination vehicle with a gross vehicle weight in excess of twenty-six thousand pounds.

"Apportionable vehicle" does not include recreational vehicles, vehicles displaying restricted plates, city pick-up and delivery vehicles, buses used for the transportation of chartered parties, or vehicles owned and operated by the United States, this state, or any political subdivisions thereof.

(HH) "Chartered party" means a group of persons who contract as a group to acquire the exclusive use of a passenger-carrying motor vehicle at a fixed charge for the

vehicle in accordance with the carrier's tariff, lawfully on file with the interstate commerce commission, for the purpose of group travel to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(II) "International registration plan" means a reciprocal agreement of member jurisdictions that is endorsed by the American association of motor vehicle administrators, and that promotes and encourages the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles and recognizing registration of vehicles apportioned in member jurisdictions.

(JJ) "Restricted plate" means a license plate that has a restriction of time, geographic area, mileage, or commodity, and includes license plates issued to farm trucks under division (K) of section 4503.04 of the Revised Code.

(KK) "Gross vehicle weight," with regard to any commercial car, trailer, semitrailer, or bus that is taxed at the rates established under section 4503.042 of the Revised Code, means the unladen weight of the vehicle fully equipped plus the maximum weight of the load to be carried on the vehicle.

(LL) "Combined gross vehicle weight" with regard to any combination of a commercial car, trailer, and semitrailer, that is taxed at the rates established under section 4503.042 of the Revised Code, means the total unladen weight of the combination of vehicles fully equipped plus the maximum weight of the load to be carried on that combination of vehicles.

(MM) "Chauffeured limousine" means a motor vehicle that is designed to carry fewer than nine passengers and is operated for hire on an hourly basis pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip. "Chauffeured limousine" does not include any vehicle that is used exclusively in the business of funeral directing.

APPENDIX D

Cleveland Codified Ordinance Section 601.15:

Section 601.15 Inspection of Vehicles for the Purpose of Locating Stolen Motor Vehicles and/or Stolen Parts

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police, or his authorized representative, may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section.

Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.

(Ord. No. 137-86. Passed 1-13-86, eff. 1-16-86)